

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE EMERGENCY MEDICAL SERVICES REGULATORY BOARD

In the Matter of the Application and
License of CART Ambulance, Inc.

ORDER ON MOTIONS TO QUASH
OR MODIFY SUBPOENAS

The above-entitled matter came before Administrative Law Judge (ALJ) George A. Beck on Respondents' motions to quash or modify the subpoena served by Petitioner CART Ambulance, Inc.¹ Respondents filed their motions by June 26, 2000. Petitioner filed a response on June 30, 2000, and the record closed on that date.

Jeffrey K. Priest, Esq., Priest Law Office, P.A., 501 East Highway 13, Suite 114, Burnsville, Minnesota 55337, represented the Petitioner, CART Ambulance, Inc. David T. Schultz, Esq., and Gregory Gisvold, Esq., Halleland Lewis Nilan Sipkins & Johnson, 220 South Sixth Street, Suite 600, Minneapolis, Minnesota, 55402-4501, represented Allina Medical Transportation. Cynthia Jokela Moyer, Esq., Fredrikson & Byron, P.A., 1100 International Centre, 900 Second Avenue South, Minneapolis, Minnesota 55402-3397, represented North Medical Transportation Services. Daniel J. Connolly, Esq., Faegre & Benson, 2200 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 55402-3901, represented Critical Care Services, Inc., d/b/a Life Link III. William M. Beadie, Esq., Moore, Costello, & Hart, 1400 Norwest Center, 55 East Fifth Street, St. Paul, Minnesota 55101-1792, represented HealthEast Transportation.

Based upon the file, record, and proceedings herein, and for the reasons set forth in the accompanying Memoranda, the Administrative Law Judge makes the following:

ORDER

1. That Respondents' motion to quash Petitioner's subpoena is DENIED.
2. That Petitioner's subpoena shall be modified and Respondents shall provide documents as outlined in the Memorandum portion of this Order.
3. All documents produced under this Order shall be not public and their use shall be limited to this contested case proceeding. Counsel for Petitioner shall return all documents not made exhibits to the appropriate Respondents at the conclusion of this hearing.

Dated this _11th_ day of July 2000.

S/ George A. Beck

GEORGE A. BECK

¹ The objectors to the subpoenas are referred to as Respondents although they are not yet formal parties to the proceeding.

MEMORANDUM

CART Ambulance, Inc. ("CART") is an ambulance company providing Basic Life Support ("BLS") scheduled ambulance transportation services in Hennepin, Ramsey and portions of Dakota and Anoka counties. CART has submitted an application to the Emergency Medical Services Regulatory Board for a license to provide Advanced Life Support ("ALS") scheduled ambulance services in these areas. Four businesses already providing ambulance transportation services to the greater Minneapolis and St. Paul metropolitan areas have objected to CART's discovery subpoena. The four objecting businesses are: Allina Medical Transportation ("Allina"), North Medical Transportation ("North Medical"), HealthEast Transportation ("HealthEast"), and Life Link III ("Life Link").

CART issued subpoenas seeking the following data:

Financial and Billing Information

- (1) Any and all documents that set forth a comprehensive summary of Payor mix of revenues over the past five years.
- (2) Current shareholder roll or similar document that sets forth the names and addresses of all current shareholders of corporate stock.
- (3) Any and all corporate state and federal tax returns with all attached schedules for last five years. (1994-1999).
- (4) Any document that sets forth a comprehensive summary or partial summary of salary ranges and salary expenditures over past five years.
- (5) The results of any certified or uncertified financial audits or reviews conducted internally or by third parties over the past five years.
- (6) Any and all profit and loss statements prepared during the past five years.
- (7) Any and all balance sheets prepared during the past five years.
- (8) Any and all summary itemizations of capital expenditures prepared or pertaining to the past five years.

Run Volume Information

- (9) Any and all fractile response time analysis summaries prepared or pertaining to the past five years.
- (10) Any and all Unit Hour utilization summaries prepared or pertaining to past five years.
- (11) Any and all summaries indicating breakdown of ambulance transportation services provided (i.e. Non 911 ALS, Non 911 BLS, 911 ALS, 911 BLS) over past five years.

- (12) Any and all summary documents breaking down type and amount of reimbursement rates or service charges prepared over past five years.
- (13) Any and all summary documents or manuals that indicate the type and contents of all reports that can be generated by the current Computer Aided Dispatch Software (CAD) or any other type of Computer Aided Dispatch software utilized over the past five years.
- (14) Any and all contracts or agreements for provision of services of any type with hospitals, medical facilities, institutions, governmental units or any other organization located within Hennepin, Ramsey, Dakota or Anoka Counties in effect at any time within the past five years.
- (15) Any and all contracts or agreements for the provision of billing services to or on behalf of your organization prepared or pertaining to the past five years.
- (16) Any and all employment contracts or agreements, whether individual or with unions or other employee organizations, that have been in effect at any time over the past five years.

Quality Assurance Information:

- (17) Any and all documents or manuals that set forth a comprehensive scheme for Quality Assurance or Quality Improvement activities over the past five years.
- (18) Any and all applications for accreditation by third party institutions or organizations that have been submitted or have led to accreditation of the organization at any time over the past five years.
- (19) Any and all documents evidencing complaints received by or on behalf of your organization regarding the provision of scheduled ambulance transport services.
- (20) Any and all documents setting forth a comprehensive scheme for resolution of consumer complaints received by or on behalf of your company.

Resource and System Management Information:

- (21) Any and all documents setting forth scheme for utilization of system resources on a daily, weekly, monthly, or other basis (i.e., system status plan) that has been in effect at any time over the past five years.

Respondents have moved to quash or modify Petitioner's subpoena arguing that the information sought is overbroad, proprietary, unduly burdensome, and not reasonably related to the review criteria set forth in Minn. Stat. § 144E.11, subd. 6 (2000).

Minn. Stat. § 144E.11 governs the procedure for ambulance service licensure. Pursuant to Minn. Stat. § 144E.11, subd. 6, the Administrative Law

Judge is required to consider the following factors when reviewing an application for ambulance service licensure:

- (1) The relationship of the proposed service or expansion in primary service area to the current community health plan as approved by the Commissioner of Health under section 145A.12, subd. 4;
- (2) The recommendations or comments of the governing bodies of the counties, municipalities, and regional emergency medical services system designated under Section 144E.50 in which the service would be provided;
- (3) The deleterious effects on the public health from duplication, if any, of ambulance services that would result from granting the license;
- (4) The estimated effect of the proposed service or expansion in primary service area on the public health; and
- (5) Whether any benefit accruing to the public health would outweigh the costs associated with the proposed service or expansion in primary service area.

In *In re Rochester Ambulance Service, a Div. of Hiawatha Aviation of Rochester, Inc.*², the Minnesota Court of Appeals affirmed the Commissioner of Health's denial of an ambulance service license application where the applicant failed to demonstrate that its proposed service was needed. The Commissioner's decision to deny the license application was based primarily on the perceived "deleterious effect on the public health" the introduction of competition would have on the primary service area. Specifically, the Commissioner reasoned that the revenues of the existing ambulance service company (Gold Cross) would decline resulting in either a reduction in services or an increase in ambulance charges.³ The applicant argued that it did not have the means to prove that Gold Cross' revenues would not be reduced by competition and that Gold Cross would not be forced to reduce service or raise rates. As an initial matter, the Court of Appeals acknowledged that certain financial information concerning the existing ambulance transport service company was necessary for a proper determination of the license application.⁴ The Court, however, rejected the applicant's argument that it faced an impossible burden in obtaining this information. The Court noted that the rules governing contested case matters provide for the use of any means of discovery available pursuant to the Rules of Civil Procedure.⁵ Consequently the Court found that Rochester Ambulance "had the ability to discover financial information about Gold Cross" in an attempt to establish that there would be no deleterious effect on the public health resulting from the duplication of services, but failed to do so.⁶

² 500 N.W.2d 495 (Minn. App. 1993).

³ Id. at 498.

⁴ Id. at 499.

⁵ Id. at 499, citing Minn. R. 1400.6700, subp. 2 (1991).

⁶ Id. at 499.

And in *North Memorial Medical Center v. Minnesota Dept. of Health*⁷, the Court of Appeals affirmed the Commissioner's denial of North Memorial's application for a license to extend the service area for its scheduled ambulance services where North Memorial had failed to submit evidence of the demand for scheduled services in the proposed area or of the effect of duplication. Specifically, the Court explained that "to make an adequate showing of need under the duplication factor, North would need to submit some evidence of an increase in demand in the area into which it seeks to expand its service."⁸ The Court further stated that to show increased demand, "North could have investigated whether the existing providers in the proposed area of expansion had experienced an increase in demand for scheduled services over, for example, the last 5 years."⁹ Without such a showing, the Court determined that granting North's license application would risk duplication.¹⁰

It is CART's burden to demonstrate a need for the service it seeks to provide. And, pursuant to the criteria listed in Minn. Stat. § 144E.11, Subd. 6, CART must establish that the granting of its license application will not have a deleterious effect on public health from duplication of services. That is, based on the reasoning in *Rochester Ambulance Service*, CART must show that the granting of its license application will not result in Respondents reducing services or raising rates due to lost revenue. Accordingly, CART is entitled to obtain financial information relevant to the issue of "deleterious effect on the public health", as well as information necessary to show a demand or need for additional service in the proposed area. Therefore, the Administrative Law Judge concludes that Petitioner is entitled to obtain financial information from the existing providers and other information necessary to establish a need for its services in the proposed area.

Petitioner's subpoena, however, seeks information well beyond that necessary to present its case. Pursuant to Minn. R. 1400.7000, subp. 3 (1999), the Administrative Law Judge may cancel or modify a subpoena if it is unreasonable or oppressive. The Administrative Law Judge therefore makes the following modifications to CART's subpoena and orders the Respondents to produce the following:

Financial and Billing Information

- (1) Any and all annual reports for the past three years (1997-2000).
- (2) Any and all corporate state and federal tax returns with all attached schedules for the last three years (1997-1999).
- (3) Any and all profit and loss statements for the last three years, if not included in the annual reports (1997-2000).

⁷ 423 N.W.2d 737 (Minn. App. 1988).

⁸ Id. at 740.

⁹ Id.

¹⁰ Id.

- (4) Any and all balance sheets prepared during the last three years (1997-2000).

Run Volume Information

- (1) Any and all ALS run volume information or summaries of ALS ambulance transports for the past five years including response time information and "fractile response time analysis summaries" (1995-2000).
- (2) Any and all unit hour utilization summaries pertaining to ALS ambulance transport service for the past five years (1995-2000).
- (3) Any and all summaries of ALS scheduled ambulance transport services for the last five years (1995-2000).

Quality Assurance Information

- (1) Any and all documents evidencing consumer-based complaints received regarding ambulance transport service response times over the last three years (1997-2000).
- (2) Any and all complaint policies in effect at any time during the last three years (1997-2000).

In all other respects, CART's subpoena requests are canceled as not reasonably related to the applicable review criteria. Specifically, the ALJ finds the names and addresses of current shareholders, customer lists, salary ranges, quality assurance manuals, and employment and service contracts to be irrelevant to the issue in this matter.

G.A.B.